

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

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JOHN E. HOWARD, GREGORY W. SCOTT, JOHNNY L.  
SMITH, TOMAS VAZQUEZ, JOHN WYCHE, HENRY  
ROUSE, ARCHIE ROUSE, AFRO-AMERICAN POLICE  
ASSOCIATION, Individually and on behalf of all other  
persons similarly situated,

Plaintiffs,

-VS-

**ORDER**

ELISHA FREEDMAN, CITY MANAGER OF THE CITY OF  
ROCHESTER, NEW YORK, THOMAS HASTINGS, CHIEF  
OF POLICE OF THE CITY OF ROCHESTER POLICE  
DEPARTMENT, MEMBERS OF THE COUNTY OF MONROE  
CIVIL SERVICE COMMISSION, EXECUTIVE DIRECTOR OF  
THE COUNTY OF MONROE CIVIL SERVICE COMMISSION,

74-CV-234

Defendants.

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On August 29, 2006, the Court issued an Order to Show Cause based upon the Affidavit of David T. Moore, Chief of Police of the City of Rochester, sworn to July 20, 2006, directing that plaintiffs show cause why an Order should not be made herein modifying the Order and Judgment of the Honorable Harold P. Burke, United States District Judge, dated May 12, 1975, as modified by the Orders of the Honorable Michael A. Telesca, United States District Judge, dated May 28, 1992 and January 20, 2004 (hereinafter referred to as the "Consent Decree"), by amending Paragraph 6 of the 1975 Order relating to a review of a rejection on the basis of a record of arrest or conviction, a background investigation, a psychological test and/or psychiatric interview.

Thomas S. Richards, Corporation Counsel of the City of Rochester, Jeffrey Eichner, of counsel, appeared on behalf of the moving party, and Bryan D. Hetherington, Chief Counsel, Empire Justice Center, appeared on behalf of the Plaintiff class that was certified in this action, and Trevett Cristo Salzer & Andolina P.C., Lawrence J. Andolina, of counsel, appeared on behalf of the Rochester Police Locust Club, Inc. A Hearing was held at the United States Courthouse, 100 State Street, Rochester, New York, on October 4, 2006, at which there was no opposition to the motion.

**IT IS HEREBY ORDERED** that the Order and Judgment of the Honorable Harold P. Burke, United States District Judge, dated May 12, 1975, as amended by Orders of the

Honorable Michael A. Telesca dated May 28, 1992, and January 20, 2004, is hereby further amended by amending Paragraph 6 thereof to read in its entirety as follows:

"6. Defendants, their agents, employees, and successors shall not reject a minority applicant for a position as police officer in the Rochester Police Department on the basis of a record of arrest or conviction, a background investigation, a psychological test and/or psychiatric interview unless said applicant is informed in writing of the specific reason(s) for the rejection and his or her right to review. A decision to reject said applicant on the basis of a background investigation, psychological test and/or psychiatric interview shall be subject to review if the applicant files a written request with the Civil Service Commission of the City of Rochester within ten (10) calendar days after mailing of the notice of rejection and right to review. The review shall be conducted by a Review Panel comprised of a representative of the Civil Service Commission, a representative of the Rochester Police Department, and the Affirmative Action Officer of the City of Rochester or a diversity representative of the City, or the Civil Service Commission may conduct the review."


Rochester, New York  
October 23, 2006

  
MICHAEL A. TELESCA  
United States District Judge


Approved as to content and form:

  
JEFFREY EICHNER  
Municipal Attorney, City of Rochester

Dated: October 11, 2006

  
BRYAN D. HETHERINGTON  
Empire Justice Center  
Attorney for Plaintiff Class

Dated: October 17, 2006

  
LAWRENCE J. ANDOLINA  
Trevett Cristo Salzer & Andolina P.C.  
Attorney for Rochester Police Locust Club, Inc.

Dated: October 12, 2006